

REMARKS

In response to the above-identified Office Action, Applicant amends the application and seeks reconsideration thereof. In this response, Applicant amends claims 1, 4, 5, 8, 11 and 13, and adds new claims 21 and 22. Claims 12 and 14-17 are canceled without prejudice and without disclaimer of the subject matter therein. Accordingly, claims 1-11, 13 and 18-22 are pending.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attachment is captioned "VERSION WITH MARKINGS TO SHOW CHANGES MADE."

Applicant notes that the amendment to claim 4 corrects a typographical error.

In addition, Applicant submits herewith the following patent: U.S. Patent No. 6,139,553 to Dotan ("Dotan").

I. Claims Rejected Under 35 U.S.C. § 103(a)

The Examiner rejects claims 1-20 under 35 U.S.C. § 103(a) as being unpatentable over PCT Patent No. WO 99/21532 to Procter & Gamble ("P&G"). Applicant respectfully traverses this rejection.

The Examiner's obligation in making a *prima facie* case of obviousness requires the Examiner to show that the prior art and combination teaches or suggests all elements of the claimed invention. Applicant respectfully submits that the Examiner has failed to set forth a *prima facie* case of obviousness.

a. Claims 1-4 and 21-22

Claim 1 recites a composition comprising a base comprising as a principal component a moisturizer suitable for application to human skin; and a plurality of abrasive particles having a particle size capable of abrading the skin.

P&G discloses a substantially dry, personal cleaning product similar to a wash cloth that is intended to be wetted with water prior to use. The cleansing product comprises a water insoluble substrate used for exfoliation, a lathering surfactant impregnated in the substrate, and a fragrance-releasing complex also impregnated in the substrate. P&G, Abstract; p. 8, ¶ 1; p. 11, ¶ 2. P&G does not teach or suggest a composition comprising as a principal component a moisturizer. P&G also teaches the use of "alumina" particles to carry fragrance, not to abrade the skin. Thus, P&G additionally does not teach or suggest a plurality of abrasive particles having a particle size capable of abrading the skin. Hence, P&G does not teach or suggest these features of Applicant's Claim 1.

U.S. Patent No. 6,139,553 to Dotan ("Dotan"), retrieved by Applicant, discloses a handheld apparatus having a disk which is rotated and vibrated while pressed into contact with a first facial preparation containing an abrasive on a subject's face. Dotan, Abstract. The first facial preparation is a mud-mixture containing abrasive particles, and which thus produces a "scrubbing" or "peeling" effect. Dotan, col. 3, lines 60-67. Dotan discloses that a second preparation containing a moisturizer is worked into the skin in a similar manner after the first preparation is removed.

Therefore, Dotan does not teach or suggest a facial preparation containing both an abrasive and a moisturizer.

Applicant respectfully requests the withdrawal of the rejection of claim 1. Claims 2-4 and 21-22 depend from claim 1 and therefore contain all the limitations of that claim.

Claim 2 adds that the moisturizer comprises one of a liquid, a gel, and an emollient. P&G and Dotan fail to disclose or provide any motivation for this further limitation.

Claim 3 adds that the abrasive particles in the composition including a moisturizer comprise one of corundum and magnesium oxide. P&G and Dotan fail to disclose or provide any motivation for this further limitation.

Claim 4 adds that corundum particles in the composition including a moisturizer have an average particle size in the range of 50 micros to 240 micros. P&G and Dotan fail to disclose or provide any motivation for this further limitation.

Claim 21 adds that the composition may be left on the skin after application. P&G and Dotan fail to disclose or provide any motivation for this further limitation.

Claim 22 adds that the plurality of abrasive particles are suspended in the moisturizer. P&G and Dotan fail to disclose or provide any motivation for this further limitation.

b. Claims 5-7

Claim 5 recites a composition comprising a base suitable for application to human skin; and a plurality of particles of corundum suspended in the base having an average particle size in the range of 50 microns to 556 microns.

P&G discloses a fragrance carrier of "alumina" comprising particles having a diameter from about 0.001 micron to about 50 microns. P&G, page 31, paragraph 1. Thus, P&G does not teach or suggest a plurality of particles of corundum suspended in a base having an average particle size in the range of 50 microns to 556 microns. Similarly, there is no motivation for having larger particle sizes of "alumina" in P&G since P&G is concerned with utilizing the "alumina" only as a fragrance carrier not as an abrasive. In fact, in its example particle sizes for _____ it lists particle sizes much smaller than 50 μ n. See P&G, page __, at __. Accordingly, Applicants respectfully requests withdrawal of the rejection of independent claim 5. Claims 6-7 depend from claim 5 and therefore contain all of the limitations of that claim.

c. Claims 8-10

Claim 8 recites an apparatus comprising a handle suitable for gripping by a human hand, the handle having a head portion; and a porous applicator coupled to the head portion of the handle having dimensions suitable for contacting localized areas of human skin, the porous applicator having a surface property such that when applied to human skin in the presence of an exfoliating composition, the

porous applicator manipulates the position about the skin allowing the composition to abrade the epidermis.

Unlike Applicant's claim 8, P&G discloses an abrasive cloth (substrate) rather than an applicator coupled to a handle. Furthermore, P&G discloses that such a substrate is highly convenient to use since it is in the form of a substantially dry article like a wash cloth and, therefore, obviates the need to carry cumbersome bottles, bars, jars, tubes, and other forms of cleansing and conditioning articles. P&G, p. 2, ¶ 2. Therefore, not only does P&G fail to disclose an applicator coupled to a handle, P&G teaches away from using its product in that fashion since otherwise, the user would have to carry additional cumbersome articles such as a the handle.

Dotan discloses a vibrating device but fails to disclose a porous applicator coupled to that device. In contrast, Dotan discloses a flat disk which is rotated and vibrated while pressed into contact with a facial preparation on a subject's face. Dotan, Abstract. Dotan does not disclose that the disk surface is porous.

Since none of the cited prior art references in combination teach or suggest all of the features of Applicant's claim 8, Applicant respectfully requests withdrawal of the rejection of independent claim 8. Claims 9-10 depend from claim 8, and therefore contain all of the limitations of that claim.

Claim 9 adds that the applicator comprises a sponge. P&G and Dotan fail to disclose or provide any motivation for this further limitation.

Claim 10 adds that the applicator further comprises a cap comprising a surface and sidewalls defining an interior volume having dimensions corresponding to

dimensions of the head portion of the handle with the sponge coupled to the surface cap. P&G and Dotan fail to disclose or provide any motivation for this further limitation.

d. Claims 11 and 13

Claim 11 recites an apparatus comprising a vibrator having a vibratable head; and an applicator coupled to the head, the applicator comprising a sponge having dimensions suitable for contacting localized areas of human skin, the applicator having a surface property such that when applied to human skin in the presence of an exfoliating composition, the applicator manipulates the composition about the skin allowing the composition to abrade the epidermis.

P&G does not disclose a sponge massaging pad on the head of a vibrator. P&G discloses that the substrate is used by mechanically agitating and or deforming it either prior to or during contact with the skin or hair. P&G, p. 71, ¶ 1. Furthermore, P&G teaches away from using its product with an accessory since otherwise, the user would have to carry additional cumbersome articles such as a mechanical vibrator. P&G, p. 2, ¶ 2.

Dotan does not disclose a sponge applicator. In contrast, Dotan discloses a handheld apparatus having a flat disk which is rotated and vibrated while pressed into contact with a facial preparation on a subject's face.

Since none of the cited prior art references combined teach or suggest all of the features of Applicant's claim 11, Applicant respectfully requests withdrawal of

the rejection of independent claim 11. Claim 13 depends from claim 11, and as such it contains all of the limitations of claim 11.

Claim 13 adds an applicator comprising a closed-cell sponge. P&G and Dotan fail to disclose or provide any motivation for this further limitation.

Claim 18 recites a method comprising applying a composition to an area of human skin, the composition comprising a base and a plurality of abrasive particles, the base comprising, as a principal component, a moisturizer; and using a vibrator, manipulating the composition over the area of human skin.

P&G does not teach or suggest a composition comprising a plurality of abrasive particles and a moisturizer or manipulating said composition over human skin using a vibrator. Rather, P&G teaches mechanical manipulation of a portable, abrasive substrate against a subject's face.

Since none of the cited prior art references combined teach or suggest all of the features of claim 18, Applicant respectfully requests withdrawal of the rejection of independent claim 18. Claims 19 – 20 depend from claim 18 and therefore contain all of the limitations of claim 18.

Claim 19 adds that manipulating comprises causing a portion of the base to be absorbed by the area of the human skin. P&G and Dotan fail to disclose or provide any motivation for this further limitation.

Claim 20 adds that after manipulating, wiping off any unabsorbed portion of the composition. P&G and Dotan fail to disclose or provide any motivation for this further limitation.

CONCLUSION

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly, extension of time fees.

Respectfully submitted,

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Dated: 5/28/02

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CERTIFICATE OF MAILING:

I hereby certify that this correspondence is being deposited as First Class Mail with the United States Postal Service in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on 5/28/02.

Bia J. Ma 5/28/02
Date

Attachment: Version with Markings to Show Changes Made



VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS

Claims 12, 14, 15, 16, and 17 have been canceled.

The claims have been amended as follows:

1. (Amended) A composition comprising:

a base comprising as a principal component a moisturizer suitable for application to human skin; and

a plurality of abrasive particles having a particle size capable of abrading the skin.

4. (Amended) The composition of claim 1, wherein the abrasive particles comprise corundum having an average particle size in the range of 50 ~~mil~~ microns to 240 microns.

5. (Amended) A composition comprising:

a base suitable for application to human skin; and

a plurality of corundum suspended in the base having an average particle size in the range of ~~34~~ 50 microns ~~mil~~ to 556 microns.

8. (Amended) An apparatus comprising:

a handle suitable for gripping by a human hand, the handle having a head portion; and

a porous applicator coupled to the head portion of the handle having dimensions suitable for contacting localized areas of human skin, the porous applicator having a surface property such that when applied to human skin in the

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presence of an exfoliating composition, the porous applicator manipulates the composition about the skin allowing the composition to abrade the epidermis.

11. (Amended) An apparatus comprising:

a vibrator having ~~a vibratable~~ an eccentrically moveable head; and

an applicator coupled to the head, the applicator comprising a sponge having dimensions suitable for contacting localized areas of human skin, the applicator having a surface property such that when applied to human skin in the presence of an exfoliating composition, the applicator manipulates the composition about the skin allowing the composition to abrade an epidermal layer of the human skin.

13. (Amended) The apparatus of claim-~~12~~11, wherein the applicator comprises a closed-cell sponge.

Claims 21 and 22 have been added.

21. (New)The composition of claim 1, wherein the composition may be left on the skin after application.

22. (New)The composition of claim 1, wherein the plurality of abrasive particles are suspended in the moisturizer.